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GOVERNMENT OF KERALA

**Public Works (Transport—B) Department**

NOTIFICATION

No. 13361/TB1/73/PW. *Dated, Trivandrum, 4th February 1976.*

The following draft of the Kerala Motor Accidents Claims Tribunals Rules, 1976 which the Government of Kerala propose to make in exercise of the powers conferred by section 111A of the Motor Vehicles Act, 1939 (Central Act IV of 1939) is hereby published for general information, as required by sub-section (1) of section 133 of the said Act.

Notice is hereby given that the draft will be taken up for consideration on or after 6-3-1976 and objections or suggestions if any, that may be received from any person with respect to the said draft, on or before the date specified above will be considered by the Government. Objections or suggestions shall be addressed to the Special Secretary to Government, Public Works (Transport—B) Department, Secretariat, Trivandrum.

33/411/MC.

## DRAFT OF

# THE KERALA MOTOR ACCIDENTS CLAIMS TRIBUNALS RULES, 1976

1. *Short title and extent.*—(1) These Rules may be called the Kerala Motor Accidents Claims Tribunals Rules, 1976.

(2) They shall extend to the whole of the State of Kerala.

2. *Definitions.*—In these Rules, unless the context otherwise requires,—

(a) "Act" means the Motor Vehicles Act, 1939 (Central Act IV of 1939);

(b) "Claims Tribunal" means a Motor Accidents Claims Tribunal constituted under section 110 of the Act;

(c) "Legal representative" shall have the meaning assigned to it under clause (ii) of section 21 of the Code of Civil Procedure, 1908.

3. *Application for compensation.*—Every application for payment of compensation shall be made in the form appended to these rules and shall be accompanied by the fee prescribed therefor in sub-rule (1) of rule 22.

4. *Examination of applicant.*—On receipt of an application under rule 3, the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing.

5. *Summary dismissal of application.*—The Claims Tribunal may, after considering the application and the statement, if any, of the applicant recorded under rule 4, dismiss the application summarily, if for reasons to be recorded it is of the opinion that there are no sufficient grounds for proceeding therewith.

6. *Notice to parties involved.*—(1) If the application is not dismissed under rule 5, the Claims Tribunal shall send to the owner of the Motor Vehicle involved in the accident and its insurer, a copy of the application together with a notice of the date on which it will hear the application, and may call upon the parties to produce on that date any evidence which they may wish to tender.

(2) If the insurer is not impleaded as a party to the application as originally filed, or if the name of the insurer is not correctly given therein, it shall be open to the applicant to make an application to the Tribunal for the appropriate amendment to the application for the purpose of bringing the insurer on record.

7. *Appearance and examination of parties.*—(1) The owner of the motor vehicle and the insurer may, and if so required by the Claims Tribunal shall, at or before the first hearing or within such further time as the Claims Tribunal may allow, file a written statement dealing with the claim raised in the application, and any such written statement shall form part of the record.

(2) If the owner or the insurer contests the claim, the Claims Tribunal may, and if no written statement has been filed it shall, proceed to examine the owner and the insurer upon the claim and shall reduce the substance of the examination to writing.

8. (1) After perusing the application and the written statement, if any filed under rule 7 and also the result of the examination if any, under the same rule, of the owner of the Motor Vehicle and the insurer, the Claims Tribunal shall proceed to frame and record the issues upon which the right decision of the case appears to it to depend.

(2) The Tribunal may at any time before pronouncing judgment amend or delete issues already framed or frame additional issues on such terms as it thinks fit.

9. *Summoning of witnesses.*—If an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witnesses, unless it considers that their appearance is not necessary for a just decision of the case:

Provided that if in the opinion of the Claims Tribunal, the party is financially poor, it may not insist on the payment of the expenses involved and the same shall be borne by the Government:

Provided further that in cases where the party succeeds in whole or in part, the expenses so incurred by the Government shall be directed to be paid to it by the owner or the insurer, as the case may be, of the motor vehicle.

10. *Appearance of legal practitioner.*—Any party may appear in person or through a legal practitioner before the Claims Tribunal.

11. *Local Inspection.*—(1) The Claims Tribunal may, at any time during the course of an inquiry before it, visit the site at which the accident occurred for the purpose of making a local inspection, or examining any person likely to be able to give information relevant to the proceeding.

(2) Any party to a proceeding or the representative of any such party may accompany the Claims Tribunal for a local inspection.

(3) The Claims Tribunal, after making a local inspection, shall note briefly in a memorandum any facts observed, and such memorandum shall form part of the record of inquiry.

(4) The memorandum referred in sub-rule (3) may be shown to any party to the proceedings who desires to see it, and a copy thereof may, on application, be supplied to any such party.

12. *Inspection of the vehicles.*—The Claims Tribunal may, if it thinks fit, require the motor vehicle involved in the accident to be produceed by the owner for inspection at a particular time and place to be mentioned by it, if necessary in consultation with the owner.

13. *Expenditure involved for inspections.*—The Claims Tribunal may, if any journey is undertaken for the purpose specified in rule 11 at the instance of the party, require the party to deposit beforehand an amount equivalent to the actual expenses likely to be incurred by it and its staff for the purpose, and draw only the amount so deposited by the party to meet all the incidental expenditure in connection with such journey.

14. *Power of summary examination.*—(1) The Claims Tribunal, during a local inspection or at any other time, save at a formal hearing of a case pending before it, may examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not, and whether any or all of the parties are present or not.

(2) No oath shall be administered to a person examined under sub-rule (1).

15. *Method of recording evidence.*—The Claims Tribunal shall, as examination of witnesses proceeds, make a brief memorandum of the substance of the evidence of each witness and such memorandum shall be written and signed by the members of the Claims Tribunal and shall form part of the record:

Provided that the evidence of medical witness, if any, shall be taken down, as far as possible word by word.

16. *Co-opting of persons during inquiry.*—(1) The Claims Tribunal may, if it thinks fit, co-opt one or more persons possessing special knowledge with respect to any matter relevant to the

inquiry. Such persons shall not sit as member (s) of the Claims Tribunal, but shall render such assistance as is required to hold that inquiry.

(2) The remuneration, if any, to be paid to the person (s) co-opted shall, in every case, be determined by the Claims Tribunal.

17. *Diary.*—The Claims Tribunal shall maintain a brief diary of the proceedings on an application.

18. *Ascertaining particulars of earlier claims.*—The Claims Tribunal may, for reasons to be recorded in writing, call upon the respondents to furnish the following informations:—

(i) full particulars of all earlier accidents in which the repondent had been involved and in which the claims have been awarded at least in part;

(ii) the amount of compensation paid in such earlier accidents, the name and address of the victims and the name of the insurer who paid the damages; and

(iii) his connection, if any, with the claimant.

19. *Judgment and award of compensation.*—(1) The Claims Tribunal in passing orders, shall record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer, or the owner in the case of vehicles which are not insured and also the person or persons to whom compensation shall be paid.

(2) Where compensation is awarded to two or more persons, the Claims-Tribunal shall also specify the amount payable to each of them.

(3) The Claims Tribunal shall furnish copies of the judgement as required to be recorded under sub-rule (1) to the Secretary of the Regional Transport Authority, the Registering Authority and the Licensing Authority concerned for taking such action as the authorities consider necessary against the drivers, conductors or owners of the vehicles involved in the accident.

(4) Notwithstanding anything contained in sub-rules (1) and (2), the record of judgement shall, in respect of claims exceeding five thousand rupees, contain the evidence which shall either be verbatim or a reasonably complete and full memoranda of testimony explaining the basis of compensation, the findings on each such evidence and the reasons for such findings, before making an award specifying the amount of compensation.

20. *Code of Civil Procedure to apply in certain cases.*—The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to the proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 1 to 21; Order XVII; and Order XXIII, Rules 1 to 3;

21. *Appeal against the decision of Claims Tribunal.*—(1) An appeal against the award of a Claims Tribunal shall be preferred in the form of a memorandum stating concisely the grounds on which the appeal is preferred.

(2) It shall be accompanied by a copy of the judgement, the award appealed against, and the fee prescribed in sub rule (3) of rule 22.

22. *Fees.*—(1) Every application under sub-section (1) of section 110-A of the Act, for payment of compensation shall be accompanied by a fee of Re. 1 in the form of court fee stamp, if the claim in a case of accident is confined to special damages and if any further general damages are claimed, "an advolarem" fee shall be charged on the aggregate of the special and general damages claimed on the following scales, namely:—

| *Amount of Claim* | *Amount of Court Fee.* |
|---|---|
| (i) Up to Rs. 5,000 | Rs. 10. |
| (ii) Rs. 5,001 to Rs. 50,000 | Rs. 10 plus one fourth per cent of the amount by which the claim exceeds Rs. 5,000. |
| (iii) Rs. 50,001 to Rs. 1,00,000 | Rs. 122.50 plus half per cent of the amount by which the claim exceeds Rs. 50,000. |
| (iv) Over Rs. 1,00,000 | Rs. 372.50 plus one per cent of the amount by which the amount of claim exceeds Rs. 1,00,000. |

(2) The Claims Tribunal may, in its discretion, exempt a party from the payment of fee prescribed under sub-rule (1):

Provided that where a claim of a party has been accepted by the Claims Tribunal, the party shall have to pay the prescribed fee, exemption in respect of which has been granted initially, before a copy of the judgement is obtained.

(3) The fee for an appeal shall be one hundred rupees.

# FORM OF APPLICATION FOR COMPENSATION

*(See* rule 3)

The Motor Accidents Claims Tribunal

..........................................

I......... ...... ...... ...... ...... ...... ...... son/daughter/wife/widow of ...... ...... ...... ...... ...... ...... ...... ... residing at .................. ...................having been injured in motor vehicle accident hereby apply for the grant of compensation for the injury sustained.

Necessary particulars in respect of injury, vehicle etc. are given below:

I......... ...... ...... ...... ...... ...... ...... son/daughter/wife/widow of ...... ...... ...... ...... ...... ...... ...... ... residing at .................. .................hereby apply as a legal representative/agent for the grant of compensation on account of death of/injury sustained by Shri/Kumari/Srimathi ...... ...... ...... ...... ...... ...... son/daughter/wife/widow of Shri/Srimathi ...... ...... ...... ...... ...... ...... ...... who died/was injured in a motor vehicle accident.

Necessary particulars in respect of the deceased/injured the vehicle etc. are given below:—

1. Name and father's name of the person injured/dead (husband's name in the case of married woman and widow)
2. Full address of the person injured/dead
3. Age of the person injured/dead
4. Occupation of the person injured/dead
5. Name and address of the Employer of the deceased, if any.
6. Monthly income of the person injured/dead
7. Does the person in respect of whom compensation is claimed pay income-tax? If so, state the amount of income tax (to be supported by documentary evidence)
8. Place, date and time of the accident.
9. Name and address of Police Station in whose jurisdiction the accident took place or was registered.

10. Was the person in respect of whom compensation is claimed travelling by the vehicles involved in the accident? If so, give the names of places of starting of journey and destination.

11. Nature of injuries sustained.

12. Name and address of the Medical Officer/ Practitioner, if any, who attended on the injured/dead.

13. Period of treatment and expenditure if any, incurred thereon (to be supported by documentary evidence)

14. Disability for work, if any caused.

15. Registration No. and the type of the vehicle involved in accident.

16. Name and address of the owner of the vehicle.

17. Name and address of the insurer of the vehicle.

18. Has any claim been lodged with the owner/insurer? If so, with what result?

19. Name and address of the applicant.

20. Relationship with the deceased.

21. Title to the property of the deceased.

22. Amount of compensation claimed.

23. Particulars of loss and expenses.

PART I

(a) Loss of earnings from.................... to ....................

(b) Partial loss of earnings from ................ to ..............
at the net rate of Rs. ............................. a day/ week.

(c) Transport to hospital

(d) Extra nourishment

(e) Damage to clothing and articles

(f) Others.

PART II

g) Compensation for pain and suffering

h) Compensation for continuing or permanent disability, if any

(i) Compensation for the loss of earning power

Total ...... ...... ...... ...... ...... ...... ...... ...... ............ ......

24. Where the application is not made within six months of the occurrence of the accident, the cause thereof

25. (i) Whether the injured/deceased had been involved in any other road accident earlier (in case he was, state details)

(ii) Whether the injured/deceased had preferred a claim for damages in any case earlier; and if so with what result?

(iii) Whether the injured/deceased had preferred a claim from the owner of the vehicle; and if so, how?

26. Any other information that may be necessary or helpful in the disposal of the claim.

(Here furnish a brief account of how the accident occurred and state how the applicant is entitled to claim compensation and how the respondent is liable to pay the compensation claimed).

I ........................................solemnly declare that the particulars given above are true and correct to the best of my knowledge.

Date............................

(Signature or the thumb impression of the applicant).

By order of the Governor,

T. S. RAMAKRISHNAN,

*Joint Secretary.*

33/411/MC.

## Explanatory Note

(This is not part of the notification but is intended to bring out the main purport).

As per G. O. (P) 96/75/PW dated 21-4-1975, the Government of Kerala have constituted the Motor Accidents Claims Tribunal for the purpose of adjudicating upon claims for compensation in respect of accidents involving death of, or bodily injury of persons or damage to properties arising out of the use of motor vehicles. The above rules are proposed for the efficient working of the said Tribunal.

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